

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

CHARLES ALPINE	§	
v.	§	CIVIL ACTION NO. 9:08cv116
D. SWEETIN	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Charles Alpine, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Alpine says that he did not receive answers to three grievances which he filed. The sole named defendant in the lawsuit is Warden Sweetin. Alpine attaches copies of the grievances which he filed, which shows that he did receive an answer on them - he was informed that the grievances were being returned because he had filed more than one non-emergency grievance in a seven-day period, in violation of TDCJ rules.

After review of the complaint, the Magistrate Judge issued a Report on June 24, 2008, recommending that the lawsuit be dismissed. The Magistrate Judge stated that Alpine was well known to the Court, having filed at least three lawsuits or appeals which have been dismissed as frivolous or for failure to state a claim upon which relief may be granted. Consequently, the Magistrate Judge said, Alpine has "three strikes" under 28 U.S.C. §1915(g), and so in order to proceed, he must either pay the full filing fee of \$350.00 or show that he is in imminent danger of

serious bodily injury as of the filing of the lawsuit. Alpine did neither of these, and so the Magistrate Judge recommended that the lawsuit should be dismissed.

Alpine filed objections to the Report on July 10, 2008. These objections complain that the Magistrate Judge is “agreeing” with the TDCJ policy limiting the filing of grievances to one per week, and that this rule violates his right to life and due process under the Fourteenth Amendment. Alpine’s objections make no mention of the basis for the Magistrate Judge’s recommendation of dismissal, which is that he has three strikes under 28 U.S.C. §1915(g). Alpine’s objections are without merit.

The Court has conducted a careful *de novo* review of the pleadings in this cause, as well as the Report of the Magistrate Judge and the Plaintiff’s objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff’s objections are without merit. It is accordingly

ORDERED that the Plaintiff’s objections are overruled and the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Plaintiff’s motion for leave to proceed *in forma pauperis* is DENIED. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of the lawsuit without seeking *in forma pauperis* status and upon payment of the \$350.00 filing fee. Should Alpine pay the full filing fee within 30 days after the entry of final judgment, the lawsuit shall proceed as though the full filing fee had been paid from the outset; however, payment of the full filing fee would not affect a frivolousness analysis, nor would it affect the question of exhaustion of administrative remedies. Finally, it is hereby

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

So **ORDERED** and **SIGNED** this **16** day of **July, 2008**.

A handwritten signature in black ink, appearing to read "Ron Clark", written in a cursive style.

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Ron Clark, United States District Judge